



NOTICE OF PUBLIC HEARING

REGARDING PROPOSED REGULATORY ACTION BY THE CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM'S BOARD OF ADMINISTRATION

TITLE 2 CALIFORNIA CODE OF REGULATIONS BOARD MEMBER ELECTION REGULATION AMENDMENT TO SECTION 554.4

The California Public Employees' Retirement System (CalPERS) Board of Administration intends to amend section 554.4 in Title 2 of the California Code of Regulations pertaining to the candidate statement for a candidate to the elected position on the CalPERS Board of Administration. The Initial Statement of Reasons is enclosed.

The following documents were added to the rulemaking file after the original Notice of Proposed Regulatory Actions was published in the California Regulatory Notice Register 99, No. 41-Z, October 8, 1999: Agenda Item 5, Candidate Statement Regulation Update, presented at the May 18, 1999, Benefits and Program Administration Committee Meeting (BPAC); the BPAC meeting transcript related to Agenda Item 5; and the Minutes of Meeting. A copy of these documents is available at no charge upon telephone or written request to the Regulations Coordinator until February 15, 2000:

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California Public Employees' Retirement System
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P.O. Box 942702
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Notice is hereby given that comments will be taken on the proposed regulation and on the added documents identified above, at a PUBLIC HEARING to be held during the regularly scheduled meeting of the CalPERS Benefits and Program Administration Committee Meeting as follows:

CalPERS Benefits and Program Administration Meeting
February 15, 2000
1:30 p.m.
Auditorium
400 P Street, Sacramento

The hearing will be adjourned immediately following receipt of testimony. It is requested, but not required, that persons who testify at the hearing also submit two written copies of their testimony to the hearing officer.



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May 18, 1999

AGENDA ITEM 5

TO: MEMBERS OF THE BENEFITS AND PROGRAM ADMINISTRATION COMMITTEE

- I. SUBJECT:** Candidate Statement Regulation Update
- II. PROGRAM:** Administration
- III. RECOMMENDATION:** Staff presents three alternatives for possible Committee action. If the Committee desires a regulation change, the Committee should direct staff to propose and secure adoption of a regulation substantially in the form outlined in Option B or Option C.

IV. ANALYSIS:

At the February 1999 BPAC meeting, staff was directed to review possible amendments to CalPERS' regulation governing candidate statements. Section 554.4 of CalPERS' regulations currently permits candidate statements to contain a statement of the candidate's opinions or views. The specific issue of interest to the Committee was whether the content of candidate statements may be limited to short, biographical statements. The Committee indicated that the issue was prospective only, and regulation changes, if any, would not apply to the election being conducted this year. Staff was not directed to initiate regulations, but to bring back a review of the matter for Committee and Board discussion and direction.

Legal Office examination of existing case law surrounding candidate statement provisions of the State Elections Code reveals that the State Supreme Court has upheld statutory provisions which limit the content of candidate statements in judicial elections.

In *Clark v. Burleigh* (1992), the state Supreme Court considered the following language in the State Elections Code. The Code provides that candidate statements in judicial elections:

. . . shall be limited to a recitation of the candidate's own personal background and qualifications, and shall not in any way make reference to other candidates for judicial office or to another candidate's qualifications, character or activities. The elections official shall not cause to be printed or circulated any statement which the elections official determines is not so limited or which includes any reference prohibited by this section.

The court held that the quoted language does not violate either the free speech guarantee of the First Amendment, or the Equal Protection Clause of the Federal Constitution. The language is presently contained in Elections Code section 13308.

The Board is not required to act if it does not desire to change the present requirements. The existing regulation is attached as Option A.

As an alternative, the Board may desire to continue to permit expression of a candidate's own opinions, but to add the requirement that the candidate statement not refer to other candidates for the office. A possible regulation change implementing this alternative, should the Board select it, is outlined as Option B in underline/strikeout type indicating possible changes from existing regulation language.

As a separate alternative, the Board may desire to eliminate the present authority for candidate statements to contain statements of opinion, and also to prohibit candidate statements from referring to other candidates for the office. A possible regulation change implementing this alternative, if the Board selects it, is outlined as Option C in underline/strikeout form.

The Legal Office has found no reported court cases directly addressing candidate statements in elections similar to elections for CalPERS. However, based largely on the *Clark* case referred to above concerning judicial elections, the Legal Office believes that a court, if faced with the question, would likely uphold the content restrictions summarized in the last two alternatives mentioned above and contained in Options B and C, attached.

V. STRATEGIC PLAN:

This item is not a specific product of the Strategic Plan, but is part of the regular and ongoing workload of the Operations Support Services Division.

VI. RESULTS/COSTS:

If the Committee decides to keep the existing regulation, no action is required. Staff and Board candidates will continue to follow the current candidate statements regulation for future elections.

If the Committee decides to select one of the alternatives, Options B or C for candidate statements, then staff will initiate the regulation change through the Office of Administrative Law (OAL). This change would not affect the current election, but would be in effect for future elections after approval by OAL.

Michael W. Koester, Chief
Operations Support Services Division

Vincent P. Brown
Assistant Executive Officer
Financial and Administrative Services

Attachments

Option A. Existing Regulation.

Section 554.4 - Candidate Statements

Each candidate for an elective Board member position may provide a statement including the candidate's name, the word "Incumbent" when the candidate is the incumbent in the position for which the election is being held, job classification, employer (or employer at retirement), years of CalPERS-covered service, and a brief factual, biographical description of no more than 150 words of the candidate's education and background, and a list of organizations to which the candidate belongs, and positions held in those organizations. Statements indicating the candidate's opinion or positions on issues of general concern to the System's membership may be included, so long as they are clearly stated as the candidate's opinion or view. The statements must be truthful, and shall not include other information. The statements must not include any remarks or questions that are inherently misleading, including rhetorical remarks and questions that are inherently misleading.

The statement shall be filed with the Election Coordinator at the time the candidate accepts nomination. Once filed, statements may not be changed or withdrawn except by the Election Coordinator. The Election Coordinator shall reject or edit any statement which contains obscene, vulgar, profane, scandalous, untrue, libelous or defamatory matter or which does not meet the statement limitations stated above. The Election Coordinator may request the candidate to verify the truthfulness of any factual statements. The candidate shall provide timely verification upon such request. The Election Coordinator shall remove from the ballot the name of any candidate who fails to respond to such a verification request. Nothing in this section shall be deemed to make candidate statements or the authors thereof free or exempt from any civil or criminal action or penalty because of any false, slanderous or libelous statements offered for printing or distributed to voters. Information contained in the statement is the responsibility of the candidate and the Public Employees' Retirement System accepts no responsibility for the validity of the statement or the contents thereof.

Option B: For use if the Board decides to prohibit references to opposing candidates in candidate statements.

Amend Section 554.4 - Candidate Statements

Each candidate for an elective Board member position may provide a statement including the candidate's name, the word "Incumbent" when the candidate is the incumbent in the position for which the election is being held, job classification, employer (or employer at retirement), years of CalPERS-covered service, and a brief factual, biographical description of no more than 150 words of the candidate's education and background, and a list of organizations to which the candidate belongs, and positions held in those organizations. Statements indicating the candidate's opinion or positions on issues of general concern to the System's membership may be included, so long as they are clearly stated as the candidate's opinion or view. The statement shall not in any way make reference to other candidates for office or to another candidate's qualifications, character or activities. The statements must be truthful, and shall not include other information. The statements ~~must~~ shall not include any remarks or questions that are inherently misleading, including rhetorical remarks and questions that are inherently misleading.

The statement shall be filed with the Election Coordinator at the time the candidate accepts nomination. Once filed, statements may not be changed or withdrawn except by the Election Coordinator. The Election Coordinator shall reject or edit any statement which contains obscene, vulgar, profane, scandalous, untrue, libelous or defamatory matter or which does not meet the statement limitations stated above. The Election Coordinator may request the candidate to verify the truthfulness of any factual statements. The candidate shall provide timely verification upon such request. The Election Coordinator shall remove from the ballot the name of any candidate who fails to respond to such a verification request. Nothing in this section shall be deemed to make candidate statements or the authors thereof free or exempt from any civil or criminal action or penalty because of any false, slanderous or libelous statements offered for printing or distributed to voters. Information contained in the statement is the responsibility of the candidate and the Public Employees' Retirement System accepts no responsibility for the validity of the statement or the contents thereof.

Authority: Government Code section 20121. Reference: Government Code section 20096.

Option C: For use if the Board decides to prohibit references to opposing candidates in candidate statements, and also to prohibit statements of candidate opinions or views.

Amend Section 554.4 - Candidate Statements

Each candidate for an elective Board member position may provide a statement including the candidate's name, the word "Incumbent" when the candidate is the incumbent in the position for which the election is being held, job classification, employer (or employer at retirement), years of CalPERS-covered service, and a brief factual, biographical description of no more than 150 words of the candidate's education and background, and a list of organizations to which the candidate belongs, and positions held in those organizations. The statement shall be limited to a recitation of the candidate's own personal background and qualifications, and shall not in any way make reference to other candidates for office or to another candidate's qualifications, character or activities. ~~Statements indicating the candidate's opinion or positions on issues of general concern to the System's membership may be included, so long as they are clearly stated as the candidate's opinion or view.~~ The statements must be truthful, and shall not include other information. ~~The statements must not include any remarks or questions that are inherently misleading, including rhetorical remarks and questions that are inherently misleading.~~

The statement shall be filed with the Election Coordinator at the time the candidate accepts nomination. Once filed, statements may not be changed or withdrawn except by the Election Coordinator. The Election Coordinator shall reject or edit any statement which contains obscene, vulgar, profane, scandalous, untrue, libelous or defamatory matter or which does not meet the statement limitations stated above. The Election Coordinator may request the candidate to verify the truthfulness of any factual statements. The candidate shall provide timely verification upon such request. The Election Coordinator shall remove from the ballot the name of any candidate who fails to respond to such a verification request. Nothing in this section shall be deemed to make candidate statements or the authors thereof free or exempt from any civil or criminal action or penalty because of any false, slanderous or libelous statements offered for printing or distributed to voters. Information contained in the statement is the responsibility of the candidate and the Public Employees' Retirement System accepts no responsibility for the validity of the statement or the contents thereof.

Authority: Government Code section 20121. Reference: Government Code section 20096.

MEETING
STATE OF CALIFORNIA
PUBLIC EMPLOYEES' RETIREMENT SYSTEM
BENEFITS AND PROGRAM ADMINISTRATION

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LINCOLN PLAZA
400 P STREET
AUDITORIUM
SACRAMENTO, CALIFORNIA

--o0o--

TUESDAY, MAY 18, 1999

1:30 P.M.

--o0o--

Vicki L. Ogelvie, C.S.R.
License No. 7871

I N D E X

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1 CHAIRMAN FLAHERMAN: Okay. Is that four yes, two
2 no and one abstain, so the motion carries.

3 So, at this point, we need to take a break for the
4 purpose of our court reporter.

5 She says to keep going, so, whenever she is ready,
6 we are ready.

7 We will move to Agenda Item 5, Candidate Statement
8 Regulation Update.

9 The votes were three yes, two no and one abstain.

10 MR. MIXON: There are six Members voting?

11 CHAIRMAN FLAHERMAN: Yes, six Members voted, right.

12 Three Members spoke in response, five votes cast,
13 one abstain. We will rule that though as having passed.

14 Agenda Item 5.

15 CHIEF KOESTER: Well, it truly is good evening, Mr.
16 Flaherman and Members of the Committee.

17 Mike Koester, CalPERS staff, and Rick Manness, with
18 our Legal Office.

19 Agenda Item 5 is an item related to the possible
20 revision for the regulation governing candidates statements
21 for CalPERS Board elections.

22 At the February BPAC meeting, staff was directed to
23 review possible amendments to CalPERS regulations governing
24 candidates statements, second by 5.4, the CalPERS regulations
25 to permit candidate statements to contain a statement of the

1 candidates opinions or views, and the Committee was
2 interested in what the candidates statements could be limited
3 to short biographical statements only.

4 The existing regulations are shown in 55.4 and are
5 shown in your attachment as Option A. As an alternative to
6 the current regulations, if the Board desires to permit
7 expression of a candidate's own opinions but add that the
8 requirement that the candidate statement cannot refer to
9 other candidates, then Option B is a possibility.

10 Another alternative is another alternative that the
11 Board may desire to eliminate the present authority of
12 candidate statement to contain statements of opinion and also
13 to prohibit the statements from referring to other
14 candidates, that would accommodate this alternative, is shown
15 in Option C.

16 Our Legal Office has found no reported legal cases
17 directly addressing candidate statements in elections similar
18 to elections for CalPERS but has found that the State Supreme
19 Court has upheld statutory provisions which limit the content
20 of candidate statements in judicial elections.

21 To conclude, the staff is presenting three
22 alternatives for possible Committee action. If the Committee
23 desires a regulatory change, the staff should be directed to
24 propose and secure an adoption of a regulation substantially
25 in the form that is outlined in Option B or in Option C.

1 Staff are available to answer any questions you may
2 have on those options available.

3 CHAIRMAN FLAHERMAN: Thank you, Mr. Koester.

4 What is the pleasure of the Committee.

5 Dr. Clark.

6 BOARD MEMBER CLARK: Let me, in looking at this, on
7 the Attachment A, the end of the fourth line and the second
8 paragraph, you have the word untrue, and that is somewhat
9 redundant, because you say that the election coordinator may
10 request the candidate to verify the truthfulness of any
11 factual statement.

12 So, I would strike untrue there, because you are
13 going to make them verify it. If you have a statement that
14 is untrue, so, I do not think you can reject it just out of
15 hand.

16 Also --

17 BOARD MEMBER VALDES: Which one are you referring
18 to?

19 BOARD MEMBER CLARK: The second paragraph.

20 BOARD MEMBER VALDES: Of which? There are three
21 different alternatives presented to us.

22 CHAIRMAN FLAHERMAN: This is the existing language.
23 It is not changed in any of the alternatives.

24 BOARD MEMBER CLARK: I think that too in that
25 statement, election coordinator shall reject any statement,

1 et cetera, et cetera, I would put a period after matter,
2 because you are defining these, and then you go on and say or
3 which does not meet the statement of limitation, and I think
4 that is pretty open-ended.

5 I think you have to be careful you do not overly
6 restrict that. But those are just two suggestions that I
7 would make on that that I think would be more reasonable.

8 CHAIRMAN FLAHERMAN: Are there comments from other
9 Members of the Committee?

10 This is something that we can take action on this
11 or not take action on this.

12 This is the pleasure of the Committee.

13 I have Dr. Crist next.

14 COMMITTEE MEMBER CRIST: I wanted to ask Tom a
15 question.

16 Tom, you were suggesting neither B nor C.

17 BOARD MEMBER CLARK: I am just looking at A.

18 COMMITTEE MEMBER CRIST: Neither B nor C would be
19 like a new A 1, a change here, and Mr. Chairman, because he
20 has raised this, I would like to consider it, because it is a
21 brand new option.

22 It is just a change in A, and I want to get
23 precisely what that would be.

24 BOARD MEMBER CLARK: I think C has somewhat the
25 same language.

1 COMMITTEE MEMBER CRIST: But it is not the same.

2 There is a whole different thrust.

3 BOARD MEMBER CLARK: Well, just in that area.

4 COMMITTEE MEMBER CRIST: Then, could you just
5 repeat for me, please?

6 BOARD MEMBER CLARK: Yes.

7 I think that will be true in both A, B and C,
8 looking at Option A, that the second paragraph, on the end of
9 the fourth line, that you are listing a whole number of
10 things that contains obscene, vulgar, profane, scandalous and
11 untrue, and then below there you are saying, if it is untrue,
12 you are going to request of the individual of whether that is
13 untrue, so I do not think that you have to list untrue there,
14 because you are going to verify that by asking them if there
15 is something that is untrue, that you are going to ask them.

16 CHAIRMAN FLAHERMAN: Well, I think that the issue
17 was that one statement is trying to set a standard of what is
18 permissible, and the other is saying how are you are going to
19 go about editing the statements.

20 Let us hear some commentary from our counsel, Mr.
21 Manness.

22 MR. MANNESS: Yes, Rick Manness, of CalPERS Legal
23 staff.

24 If I understand your comment, correctly, Tom, you
25 are concerned about that if the staff is verifying the

1 truthfulness of the statement that is submitted why would we
2 need something about being untrue in there.

3 BOARD MEMBER CLARK: I think it is redundant to
4 have it in there, and then have the fact that you are going
5 to verify it.

6 MR. MANNESS: I think that one response would be
7 that after verification the statement turns out not to be
8 true, then we would want to keep the authority in that
9 sentence to reject it.

10 BOARD MEMBER CLARK: Well, I would think that you
11 would have that authority, basically, it would be implied
12 that you could reject it if it was not true, because you are
13 going to verify it.

14 CHAIRMAN FLAHERMAN: Well, isn't the goal here to
15 be redundant for the purpose of just being very clear?

16 BOARD MEMBER CLARK: Just a thought that in looking
17 this over --

18 CHIEF KOESTER: We looked at just the parts in the
19 first paragraph related to the opinion and the reference to
20 other candidates, and we did not look at the second
21 paragraph.

22 But if the Committee so desires, we can certainly,
23 if there are going to be some changes, we can certainly look
24 at that as part of this process.

25 We did not look at the second part simply be an

1 opinion and reference to other candidates, so that is what
2 our Agenda is focusing on.

3 CHAIRMAN FLAHERMAN: Dr. Clark.

4 BOARD MEMBER CLARK: At this hour of the day, it is
5 not a major issue.

6 CHAIRMAN FLAHERMAN: Let me recognize Mr. Alvarado.

7 COMMITTEE MEMBER ALVARADO: Thank you.

8 Maybe a suggestion. Maybe what we can do in this
9 Committee is first look at A, B and C, because the second
10 paragraph really did not change, and if we can look at the
11 two alternatives that have been presented, and then we can
12 introduce anything that might be new or anything else that
13 you would potentially like to change.

14 I think the threshold here was leave it alone or
15 look at amending the section and using Option B or C, and if
16 there is anything else you want to add, we can do that.

17 COMMITTEE MEMBER CRIST: That was the nature of the
18 question.

19 COMMITTEE MEMBER ALVARADO: Maybe that is what we
20 are trying to do here, leave it alone, change it to B or
21 change it to C, and if you add anything else --

22 CHAIRMAN FLAHERMAN: Right, and I think that is
23 excellent frame work, people should associate themselves with
24 either A, B or C as a generalizing organizing theme.

25 Dr. Crist.

1 COMMITTEE MEMBER CRIST: Yes.

2 Set aside the untrue part for a moment. I would
3 like to comment on B and C, and Mr. McRitchie is in the
4 audience, and I would very much respect his comments as well
5 on this as a past participant.

6 It seemed to me that part of the difficulty of the
7 election which I was a candidate, as was Mr. McRitchie, was
8 the changes and the argument of the changes that were made,
9 and when they were made and so on, in two-fold, in two parts.

10 One, the very fact that the staff of this System
11 was in the position of dealing with that, and we have talked
12 about that in other places, and I would prefer that was not
13 the case, but that is not the issue here, the issue here is
14 language.

15 The other part of the issue was making a reference
16 to other candidates. I think we should in all ways encourage
17 opinion, and I would, I do not think that Option C
18 discourages opinion, even though the strike-out says
19 indicating candidate's opinion on positions and so on and so
20 forth, if that could be interpreted that way, I would be
21 opposed to Option C.

22 The statement as to information leaves it open to
23 express your opinion, but I rather like Option B, and the
24 problem I think was created by and would be created by
25 anybody making a statement in these particular candidates

1 statements about another candidate.

2 I think the place to do that for all running for
3 election is in the election process with flyers or posters or
4 E-mail or whatever, but that I rather like B for that reason.

5 I do not think it constrains the candidates. It
6 can still say their opinion on substance and say anything
7 they want about themselves, but they would be constrained to
8 respond to other candidate's qualifications, and the reason
9 that I feel strongly about that, but I really do solicit
10 Jim's opinion, is that in the appeal that subsequently took
11 place, it had to do with timing, and when somebody reads
12 something and somebody hears something else, and back and
13 forth, that is an endless deal that you have to respond and
14 if, you know, you do not have to respond.

15 Then you do not worry so much about the timing part
16 of it. So, for all those reasons, I would opt for B, and I
17 do want to try to change it.

18 I do not think the true, untrue thing is really
19 that important.

20 So, if anybody else wants to comment.

21 CHAIRMAN FLAHERMAN: I offer the comment that I
22 personally prefer A, and my reasoning is like this, which is
23 that I think that C is overly restrictive for the reasons
24 that you say, and B, I worry about opening a morass, because
25 I think that anybody who is halfway clever can construct a

1 candidate statement that is walking along a very, very, fuzzy
2 line between criticizing the Board or the System, and it
3 becomes the choice of language and nouns used to describe,
4 the Board or the System will get naturally contenance with
5 whoever is reviewing this System as to whether that noun more
6 evokes the System or the Board or the individual candidate
7 who is the incumbent.

8 That is my concern about B. So, let me hear from
9 others.

10 I have Mr. Carlson next.

11 COMMITTEE MEMBER CARLSON: My question is these are
12 going to be rules and regulations of this Board, and they
13 will not go into effect until they are finally adopted; is
14 that correct?

15 MR. KOESTER: That is correct.

16 If you accept some change, they would not go into
17 effect until the next election, after yours, which would be
18 2001, I believe, for the at-large election.

19 That is correct.

20 CHAIRMAN FLAHERMAN: So, this is not time critical.

21 If we find we are not getting toward resolution
22 tonight, we might just entertain a motion to put it over.

23 CHIEF KOESTER: The process will take us about six
24 months to enact regulation changes, so --

25 CHAIRMAN FLAHERMAN: Chuck.

1 BOARD MEMBER VALDES: Thank you.

2 I would urge the Committee to favor Option 3, on
3 page 42.

4 CHAIRMAN FLAHERMAN: There is no Option 3.

5 It is C.

6 BOARD MEMBER VALDES: There is a very simple
7 reason.

8 The language is lifted directly from the Supreme
9 Court case saying that it is okay.

10 Number two, there is a later item which suggests
11 that we should delegate this to the Registrar of the local
12 County or whoever it is. That would make it very easy to
13 monitor and administer.

14 Number four, as Dr. Crist pointed out, the place
15 for opinion, characterizations, slander and liable is in
16 their own communications, on their own nickel, on the
17 Internet or whatever it is, but let them do that.

18 What is important for members of the System is that
19 they understand the qualifications, the background, the list
20 of organizations, and it should be simple, plain and it
21 should not be something that is abused.

22 If B is confusing, in a morass, then A is ten times
23 that, as we saw in the last election and in previous
24 elections.

25 Make it clean and simple. Let the candidates fight

1 it out on their own nickel and on their own turf and not in a
2 system electing things where you are trying to get some third
3 party to judge whether or not something should or should not
4 be in there.

5 CHAIRMAN FLAHERMAN: Mr. Carlson.

6 COMMITTEE MEMBER CARLSON: I share Chuck Valdes's
7 remarks, and I support the Option C.

8 CHAIRMAN FLAHERMAN: Mr. Rosenberg.

9 COMMITTEE MEMBER ROSENBERG: If it is appropriate
10 at this time, based on the Supreme Court ruling, the urging
11 of Mr. Valdes and the acceptance by Mr. Carlson, I move that
12 we direct the staff to proposed secure adoption of
13 regulations substantial in outline in Option C.

14 COMMITTEE MEMBER CARLSON: Carlson seconds.

15 CHAIRMAN FLAHERMAN: Okay. Motion by Rosenberg and
16 it has been seconded by Carlson.

17 Dr. Crist, did you want to speak?

18 COMMITTEE MEMBER CRIST: Well, I just have a
19 question for the maker, for those in favor of C, and perhaps
20 it is my reading, I would not want what we adopted here to,
21 as I said before, it does not to any way constrain any
22 candidate's statement of their own opinion regarding general
23 conditions and so on.

24 To me, personally, the critical part is the part
25 regarding reference to other candidates. I can support C.

1 My preference is B. That is just the way we
2 debate.

3 CHAIRMAN FLAHERMAN: A tired debate.

4 I would also make a comment from the Chair, also,
5 about my own reluctance to see C enacted, and I think it has
6 a lot to do with the fact that this is a precedent based on
7 judicial elections, and to me what is important here is that
8 I think that there is a history of trying to constrain and
9 being inflamed, passions in judicial elections, and I think a
10 good example of that is the way we elect Supreme Court
11 Justices as being a very, very limited choice, and the reason
12 for that is fairly obvious, which in a sense that democracy
13 may have a place in the judicial elections, but it is a very
14 limited place.

15 I think democracy in terms of electing the elected
16 portion of this Board has a much more appropriately free
17 ranging place, and I hate to see it constrained, and I would
18 ask actually of the maker of the motion if they would
19 entertain something which is something that seems to me is a
20 very modest tip of the hat toward free speech and free
21 expression, which is that we also at the same time modify our
22 regulations to include in a new field above the ballot
23 statement itself, where we put the candidates names, their
24 employer, their years of service, et cetera, a field that is
25 their Website address, and we do not have to host it.

1 I am not proposing that we host it, but that we
2 just elevate that to something that is prominent and affords
3 an opportunity for people to speak whatever they want and
4 provide that address within the context of their ballot
5 statement.

6 COMMITTEE MEMBER CRIST: Mr. Chairman, you are just
7 asking for a voluntary action to the motion, is the position
8 of the body, I just want to try to parliament -- because I
9 do not want to vote against, I would like to move a
10 substitute that we endorse Option B, give us a second to vote
11 on that one first -- it is not a substitute.

12 BOARD MEMBER VALDES: Yes, it is.
13 We can do it that way.

14 CHAIRMAN FLAHERMAN: Well, I think there is a
15 substitute, because there are multiple options.

16 It is A or not A.

17 COMMITTEE MEMBER ALVARADO: I would second that
18 then.

19 At the perfect opportunity, I would like to speak.

20 COMMITTEE MEMBER CRIST: I have already spoken.

21 CHAIRMAN FLAHERMAN: Go ahead.

22 COMMITTEE MEMBER ALVARADO: Okay. Thank you, Mr.
23 Chairman.

24 I think just given the hour, I will just add to the
25 weak argument. I think that B, I think that C stifles

1 somewhat the invitation to candidates to present their
2 opinions and views, and I do not see any harm in B, actually
3 especially where it says statements indicated the candidates
4 opinions and positions of issues of general concern may be
5 included, and I think that is something that we should say in
6 our ballot statements, I think in our candidate statements,
7 and I think that is an invitation to provide the opinions of
8 the candidates that the membership should see and the
9 candidate is encouraged to provide.

10 So, I would be in support of the substitute motion.

11 Thank you.

12 CHAIRMAN FLAHERMAN: Well, I find myself wondering
13 here, wondering whoever gets these statements at the
14 registrar where someday somebody is going to write a
15 statement surrounding a set of circumstances where they say
16 the CalPERS Board has taken no action to deal with the fact
17 that a Member of the Board has been arrested for possession
18 of cocaine or something like that, and it will be the other
19 candidate, and it seems to me that it's kind of a morass.

20 That is just my own observation.

21 Mr. Rosenberg.

22 COMMITTEE MEMBER ROSENBERG: In candidate or rather
23 in Option B, the candidate may offer their opinion.

24 If their opinion is that, the candidate believes
25 that the Members of the current Board have stolen over \$50

1 million from the members, that is their opinion.

2 Who is going to make a question whether that is a
3 true statement or not? It is their opinion, and they have a
4 right to their opinion.

5 If you look at it in that fashion --

6 CHAIRMAN FLAHERMAN: Well, there is such a thing as
7 fact.

8 COMMITTEE MEMBER ROSENBERG: No. You are asking in
9 Option B, you are stating that it is the opinion of the
10 candidate, and that is the candidate's opinion.

11 CHAIRMAN FLAHERMAN: Well, I think it is if they
12 can offer proof to a reasonable level that something is true,
13 then they can make statements that are assertions of fact and
14 let them stand as assertions of fact.

15 If they are inherently subjective or inherently
16 opinions or not verifiable to a reasonable standard, then
17 they have to be labeled as opinion.

18 That is my understanding as participating in two
19 elections as a candidate.

20 Mr. Manness, is that not generally true?

21 MR. MANNESSE: Well, I think we have where there is
22 really factual statements contained you notice, just, we look
23 into verifying that, I think adding the word opinion at the
24 beginning of that sentence, I am not sure that is going to
25 change what we do.

1 I mean, if they say the Fund is actually only \$10
2 billion in size, that is my opinion. I think we might look
3 into that as one example or illustration.

4 CHAIRMAN FLAHERMAN: And would that be potentially
5 something that would be able to be edited on the basis of
6 misleading element of our regulations?

7 Dr. Crist.

8 COMMITTEE MEMBER CRIST: Yes.

9 Two points, very quickly. First, on Chuck's point
10 about the Supreme Court, the item says either B or C would
11 satisfy the court.

12 Secondly, B is good there.

13 COMMITTEE MEMBER CARLSON: C is better.

14 COMMITTEE MEMBER CRIST: Either B or C would
15 satisfy the court.

16 COMMITTEE MEMBER CARLSON: C is better.

17 COMMITTEE MEMBER CRIST: That is your opinion.

18 Secondly, on the question of opinion, the other
19 parts of this statement, both of them, B and C say the
20 statement must be truthful.

21 Now, I think that the combination of those are
22 fine. Opinions are what they are. They are positions. They
23 are opinions.

24 But a statement of fact, as Rick mentioned, if you
25 say the Fund has dwindled to only \$10 billion, that is not an

1 opinion. That is a misstatement.

2 On the other hand, if you say the Fund could have
3 done better and could have been invested differently, that is
4 an opinion.

5 You should be perfectly free to say that, but you
6 should not be free to say that Candidate X, as a single
7 person, is responsible for something in this statement, and
8 can you say that in your electoral materials, that is my
9 whole argument.

10 I just feel B is a little bit less constraining
11 than C is all. Either one is preferable to A.

12 CHAIRMAN FLAHERMAN: A question to counsel, what is
13 your reaction, off the cuff, to a statement if someone would
14 make saying the CalPERS Board unanimously approved action X
15 or Y, is that a comment about a candidate?

16 MR. MANNESS: A hypothetical question is a
17 hypothetical answer.

18 CHAIRMAN FLAHERMAN: I am trying to think of a good
19 example, the morass.

20 MR. MANNESS: I understand what you are saying, and
21 if there is a matter of historical fact dealing with the
22 Board as opposed to an individual opponent --

23 CHAIRMAN FLAHERMAN: That would be a statement
24 about the incumbent's vote in a sense.

25 MR. MANNESS: In a sense, it might.

1 So, what I am thinking of is, okay, if the
2 incumbent was not running again, then it would be okay to say
3 that statement.

4 CHAIRMAN FLAHERMAN: Assuming that the incumbent is
5 running again.

6 COMMITTEE MEMBER CRIST: Adding the word specific
7 or something, if you are worried that there is going to be an
8 inclusion, if you are talking about another person's name.

9 BOARD MEMBER VALDES: I am going to object to
10 dialogue and to recognizing just Committee Members.

11 I am getting tired of that, and I want to agendize
12 that. I do not want any Chairman to have that ability to
13 ignore a Board Member.

14 CHAIRMAN FLAHERMAN: I am sorry, Chuck.

15 It is not my intent to ignore you. In fact, I will
16 recognize you now.

17 You are next on my list to be recognized.

18 BOARD MEMBER VALDES: All of these questions show
19 why C should be the option.

20 But if you do not want to do that, then Bill is
21 correct, B in the underlined area, right after the word
22 reference, statements shall not in any way make reference,
23 insert the words either generically or specifically to
24 candidates for office, or some other candidates or whatever,
25 generically so that it cannot be done generally.

1 Some Board Members are stealing thousands of
2 dollars, whatever it might be, something that you cannot
3 either prove or the untruth of or whatever or are on the
4 take, that kind of stuff is not necessary in a candidate
5 statement.

6 Remember, this is not a denial of free speech.
7 That is why the Supreme Court approved over the judicial
8 election area, because they have all of the opportunity on
9 their own time, on their own nickel and in any fashion they
10 want, and then, of course, they are subject to the laws of
11 liable, slander.

12 Put that in there generically or specifically, you
13 want B or otherwise go with C, and end this problem.

14 CHAIRMAN FLAHERMAN: Ms. Park.

15 ACTING BOARD MEMBER PARK: I forgot what I was
16 going to ask.

17 CHAIRMAN FLAHERMAN: Mr. Rosenberg.

18 COMMITTEE MEMBER ROSENBERG: Hypothetically, for
19 this is for the election coordinator, the next election, or
20 not the next election, to be more practical, but the election
21 beyond that, you have 50 candidates, because now they will
22 receive \$500 per meeting, by the time you get the candidates
23 statements, and there may be a number of statements in there
24 that have to be checked, how much time do you have to check
25 before the election from the time received until the time of

1 the election?

2 MS. DAGGAO: Yes. My name is Judy Daggao, CalPERS
3 staff.

4 I think it would be at least four weeks, because we
5 have to have that candidate statement content to the printer
6 by the end of July.

7 COMMITTEE MEMBER ROSENBERG: So, from a procedural
8 point of view, when the candidate statements come in, are
9 they distributed to other candidates for their rebuttal?

10 MS. DAGGAO: Not initially.

11 There are several weeks of review, going over the
12 statements, working with the candidates individually,
13 modifying, adding, changing and there are a lot of things
14 going on, verifying, endorsements, et cetera, and then this
15 is reviewed at several levels here at PERS.

16 Once that draft proposed statements are done, then
17 they are sent out to the candidates for review for final
18 corrections.

19 COMMITTEE MEMBER ROSENBERG: So, this is all within
20 a month's time?

21 MS. DAGGAO: Yes.

22 COMMITTEE MEMBER ROSENBERG: Would you say that if
23 you got, what would you say would be a possible delaying
24 point, how many rebuttals would it take for you to fall
25 behind on the checking of the statements?

1 MS. DAGGAO: I would still meet the deadline.

2 COMMITTEE MEMBER ROSENBERG: Of course.

3 You would be working overtime.

4 MS. DAGGAO: Urge more staff help.

5 COMMITTEE MEMBER ROSENBERG: The point I am looking
6 at is, whether it is B or C, what is the better way of
7 handling it.

8 CHAIRMAN FLAHERMAN: Okay. There are no more
9 requests to speak from the Board, and we have Mr. McRitchie
10 and Mr. Oates from the audience, and let us have them come up
11 before we cast our vote.

12 Let us take Mr. McRitchie first.

13 Would you state your name for the record, please.

14 MR. McRITCHIE: Jim McRitchie, a member of the
15 System.

16 Of course, I would urge Option A. I believe that
17 if the Board were to try to promulgate this regulation, I
18 would be very active in commenting and would hope that OAL
19 would reject this.

20 I think that for counsel, basically you will have
21 to discuss necessity more clearly than I think you have at
22 this point, and I think you will have to have to show
23 authority.

24 I think if you look at this Clark versus Burely
25 case a little closer, it was a candidate for Superior Court

1 Judge, and the court decision basically centered around two
2 findings; one the voters pamphlet was found by the State
3 Supreme Court to be a non-public form, and thus any
4 restrictions or limitations on expressions, quote, need only
5 be reasonable and not an effort to suppress expression, merely
6 because public officials oppose the speakers view.

7 However, in this case there, I think there is a
8 difference, I think it can reasonably be argued that the
9 Board or at least several Members of the Board seek this
10 amendment in order to suppress views which they oppose,
11 namely that Board Members should not be taking gifts from
12 CalPERS contractors, should not be sitting on the boards of
13 private investment firms at the same time they sit on the
14 CalPERS Board.

15 These are issues that were raised in the last
16 election, and I would think that the courts would view this
17 as a move by members to now suppress this type of dialogue.

18 The second key finding of the Clark versus Burely
19 case was that, quote, there are substantial alternative
20 channels open for criticism of opponents, unquote.

21 The court argued the State restricted only this one
22 channel of communication but that other channels remain open,
23 and I quote again from the case advertisements for interviews
24 in local newspapers or on local radio and television
25 programs, direct mailings to the community neighborhood,

1 distribution of handbills and personal appearances at local
2 functions, these are still open, and these are still
3 alternatives open to the Superior Court Judge candidate in
4 this case.

5 However, the ability of candidates to conduct
6 direct mailings at CalPERS is compromised by the refusal of
7 CalPERS to grant access to mailing lists of eligible voters.

8 In addition, note the repeated use of the word
9 local by the court. I would argue the nature of CalPERS is
10 substantially different than the elections addressed by Clark
11 versus Burely, because they are statewide elections involving
12 a tiny minority of the statewide population.

13 Press coverage is much less likely, because only a
14 fraction of any community can vote in the elections. I am
15 not aware of any articles outside of The Sacramento Bee
16 during the last election.

17 There was not any coverage in the LA Times. There
18 was no coverage in The San Francisco Chronicle, and I think
19 that most can see that neighborhood distribution of handbills
20 is not really a viable option.

21 Incumbents already have many advantages. Option B
22 would prohibit, the way I read it anyway, Option B would
23 prohibit candidates from making reference to other
24 candidates, and under this option, a candidate would be
25 unable to use their statement to inform voters that their

1 opponent, for example, spent their entire career as a
2 union-busting attorney, belongs to the KKK, conducts business
3 which appears to present a conflict of interest with serving
4 on the PERS Board.

5 Option C would include those prohibitions and would
6 go even further and would make it so that the candidate would
7 not be able to include their own opinion or positions on
8 issues of general concern to membership.

9 You could not use this option to endorse pending
10 legislation, for example.

11 I think that it is quite clear from the last
12 election and from many elections before that incumbents
13 already have many advantages.

14 They can use the CalPERS press office to explain
15 their latest accomplishments, and they can travel to meet
16 with constituents at System expense, and since there is no
17 runoff, incumbents can be elected by a tiny minority if the
18 candidate field is large.

19 I would ask you not to reduce democracy to a bad
20 joke by taking away the candidate's right to hold the
21 incumbents accountable for the votes that they have made.

22 That concludes my remarks. Thank you.

23 CHAIRMAN FLAHERMAN: Thank you, Mr. McRithchie.

24 Mr. Oates.

25 MR. OATES: Yes. Mr. Chair, my name is Charlie

1 Oates.

2 It is getting late. I cannot even remember my own
3 name. I represent the Torrance Police Retirees Association.

4 Sometime ago, before this very Committee, I would
5 like to comment that Mr. Valdes is on their own nickel, well,
6 we tried on our own nickel letting PERS control the mailing
7 to the members addresses that the candidate could present his
8 material and at his expense have PERS mail it out.

9 That was our only nickel. You have a million
10 members spread out all over the United States and not just
11 the State of California that participate in these elections.

12 Yet this very Board prohibited the form of using
13 your own nickel. You could not buy enough advertisement to
14 mount a campaign like you would for Controller or Treasurer
15 or Governor or to that, so you are within this body of
16 people, and so the only opportunity a candidate has to
17 contact the members is this candidate statement, and I think
18 it is terrible that there would be an attempt to restrict a
19 candidate from criticizing an incumbent.

20 That is what is it about. Incumbent has all the
21 advantages, and the incumbent is also in his kitchen, and now
22 this incumbent does not want the heat, because the member has
23 an opinion that that individual that is running against or
24 individuals he is running against is not doing the job
25 properly, but you are saying, oh, you cannot do that.

1 As far as I am concerned, and I am the greatest
2 believer in First Amendment to the Constitution of free
3 speech, and the freedom to say what I feel about an
4 individual is an inherent right, as long as it is not
5 lifeless.

6 It can even be liable if you want to sue me, but
7 however, that is my right.

8 To get this thing that you are proposing, you want
9 to restrict it even more and at the same time not even
10 letting us have our nickel to get our views out.

11 Thank you.

12 CHAIRMAN FLAHERMAN: Dr. Crist.

13 COMMITTEE MEMBER CRIST: Yes.

14 I have a question of Mr. McRitchie.

15 You think that it is true that the only way that a
16 candidate for any of the elected seats on this Board has
17 contacting the electoral is through these candidates
18 statements?

19 MR. McRITCHIE: I would say that is a primary
20 vehicle, I mean the secondary vehicle.

21 COMMITTEE MEMBER CRIST: Is not the only one?

22 MR. McRITCHIE: No, it is not the only one.

23 COMMITTEE MEMBER CRIST: Okay.

24 I would like to agree also with what you said that
25 it should not only be a candidate's right but perhaps a

1 candidate's obligation if they have an opinion on a matter of
2 substance, such as Members of this Board should not accept
3 gifts, I think that you should be free to say that.

4 I think where it becomes problematic is where a
5 candidate would indicate not that it is a position that gifts
6 are improper, which I would defend your right to say that
7 anyone's right and any other posted similar things, but
8 through careful use of the language to suggest that one
9 opposing candidate would accept gifts or whatever, it takes
10 whatever, as a gift thing is an example, and that is the best
11 means of reporting that individual's behavior, because anyone
12 can do that, that is the part I want to get out of here.

13 Seriously, I think that does not add to the free
14 speech.

15 MR. McRITCHIE: May I respond to that?

16 In the current regulations, it has to be true.

17 Okay. You cannot say anything that is not true in
18 those regulations.

19 COMMITTEE MEMBER CRIST: But come on, now you know
20 that you can say something that is literally true but by
21 implication to uninformed readers it could be just totally
22 false or misrepresentation and intentionally so, good
23 debaters do that all the time.

24 MR. McRITCHIE: Well, you know I tried to frame,
25 okay, in my candidate statement, I said something to the

1 effect that the incumbent has accepted gifts and the
2 incumbent sits on a board of a private investment firm, and I
3 had initially tried to say that a little differently, and
4 when it came back to me, you cannot, from legal counsel, it
5 was you cannot prospectively say what the incumbent would or
6 would not do, so I really could not say the incumbent's
7 position on gifts is that the incumbent believes that the
8 board should not be accepting gifts.

9 I could not say that. I could not say that the
10 incumbent's position is that the Board should be able to
11 accept gifts.

12 COMMITTEE MEMBER CRIST: You are not addressing the
13 incumbent's position at all but rather addressing your own,
14 which is opposition to accepting gifts.

15 MR. McRITCHIE: But how I think it is important to
16 inform the electra as to the difference between myself and
17 the incumbent, and one way of drawing that, I mean, if I say
18 I am opposed to gifts, that does not say that the incumbent
19 is opposed to gifts.

20 That just says I am opposed to gifts.

21 CHAIRMAN FLAHERMAN: Chuck.

22 BOARD MEMBER VALDES: Number one, when I first ran
23 for election, I was not an incumbent.

24 I did not have an access to an address list of
25 PERS, which by the way happened to have a legal impediment

1 concerning their release.

2 Number two, I went ahead and ran a campaign in the
3 same fashion, because of the difficulty that the members
4 of PERS had, that involves going to member meetings,
5 contacting members, getting the endorsements of exactly the
6 people that you are trying to represent.

7 You are talking about people who have not been able
8 to do that. Mr. McRitchie, if he is able to obtain the
9 endorsements will perhaps even do better, and if he can get a
10 number of multiple endorsements, he will do better yet, and
11 that is the forum that is available to candidates in which to
12 go ahead and state, you should endorse me, and not the other
13 candidate because the other candidate is a member of KKK.

14 MR. McRITCHIE: I would like to object to that.

15 I was endorsed by another organization.

16 BOARD MEMBER VALDES: I am talking about some
17 meaningful endorsements that could make a material impact on
18 the elections.

19 CHAIRMAN FLAHERMAN: I think we are getting a
20 little bit into the dynamics of the last election.

21 Jim.

22 BOARD MEMBER VALDES: Mr. McRitchie, you are the
23 reason that this whole item is up here.

24 MR. McRITCHIE: I am aware of that.

25 BOARD MEMBER VALDES: You are the type that uses

1 negative questions.

2 I have already done this before. You are the one
3 who said, I do not know if Bill Crist intimidated the staff,
4 and I do not know if candidate X is not beating his wife, or
5 I do not know if this candidate is accepting graft, but the
6 clear intent is to mislead.

7 It is not an untruthful statement, and that is what
8 we need to get rid of, and that is why I think you need to go
9 with B.

10 That cannot allow a reference to another candidate
11 either generically or specifically, and that allows them to
12 go ahead and state, I am opposed to the acceptance of gifts,
13 and I am opposed to wife beating, if that were an issue, and
14 I have never been involved in this and that, because you are
15 talking about yourself.

16 It is positive and allows the expression of their
17 opinion, and it does not allow the so-called debating
18 technique where you make a statement that is not untruthful,
19 it is true itself but that misleads.

20 CHAIRMAN FLAHERMAN: Mr. Carlson.

21 COMMITTEE MEMBER CARLSON: The arguments that are
22 going on right now is why we have to go to Option C, because
23 it confines the statement to what it is supposed to do, state
24 your candidate's own personal background and qualifications,
25 and I do not think we should be getting into this big area

1 here, because all it is going to do is raise more issues and
2 raise more arguments and wind up in court.

3 CHAIRMAN FLAHERMAN: Okay.

4 If there are no other requests to speak --

5 COMMITTEE MEMBER CARLSON: I would urge that we
6 vote on Option C and reject Option B.

7 CHAIRMAN FLAHERMAN: Right.

8 So, what is before us right now is Option B. It
9 has been moved and seconded.

10 Since there are no other requests to speak, I am
11 going to put the question.

12 All those in favor of adopting Option B, say aye.

13 All opposed, say no.

14 ACTING COMMITTEE MEMBER RENGE: Abstain.

15 COMMITTEE MEMBER CRIST: I will abstain with Beth.

16 CHAIRMAN FLAHERMAN: So, let me rule on the motion
17 first.

18 The motion fails, with two abstentions.

19 Back to the original motion now. We have the
20 original motion, Option C.

21 Is there discussion?

22 All those in favor of adopting Option C, say aye.

23 Any opposed, say no.

24 The motion carries.

25 ACTING COMMITTEE MEMBER BUENROSTRO: No.

1 ACTING COMMITTEE MEMBER RENGÉ: Abstain.

2 CHAIRMAN FLAHERMAN: Please note the Controller's
3 representative as an abstention.

4 COMMITTEE MEMBER CRIST: Abstain.

5 CHAIRMAN FLAHERMAN: We will note Dr. Crist's
6 abstention, also.

7 Now, this completes this item.

**CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM
BOARD OF ADMINISTRATION
BENEFITS AND PROGRAM ADMINISTRATION COMMITTEE
MINUTES OF MEETING
May 18, 1999**

OPEN SESSION

A regular meeting of the Benefits and Program Administration Committee was held on Tuesday, May 18, 1999, at 1:30 p.m., in the Lincoln Plaza Auditorium, 400 P Street, Sacramento, California.

The meeting was called to order by the Committee Chair, Michael Flaherman. The Committee Secretary, Debey Babineau, called the roll, and the following Committee Members were present:

Ronald L. Alvarado
Beth Renge representing Kathleen Connell
Robert F. Carlson
William Crist
Marty Morgenstern
William B. Rosenberg

Other Board Members Present:

Fred Buenrostro representing Marty Morgenstern
Thomas Clark
Julie Bornstein representing Kathleen Connell
Rob Feckner
Eileen Park representing Philip Angelides
Mike Quevedo, Jr.
Joseph Thomas
Charles Valdes

Staff Participating:

James Burton
Judy Daggao
James Gomez
Barbara Hegdal
Mike Koester
Rick Maness
Peter Mixon

Ron Seeling
Robert Walton
Casey Young

A quorum was present, and notice had been previously mailed to interested parties.

**AGENDA ITEM 2- APPROVAL OF THE APRIL 20, 1999 BENEFITS AND PROGRAM
ADMINISTRATION COMMITTEE MEETING MINUTES**

Mr. Rob Feckner made one correction to the minutes and asked that they reflect that he was present under "Other Board Members Present".

On MOTION by Mr. Ronald L. Alvarado, SECONDED by Mr. Robert F. Carlson and CARRIED, the Committee approved the amended minutes of the April 20, 1999 Benefits and Program Administration Committee meeting.

At this time the Chair asked Committee members if there was any objection to taking Agenda Items 9 through 17 out of order to accommodate the large number of interested parties in the audience. The Committee expressed no objection.

**AGENDA ITEM 9 – JUNE 30, 1998 JUDGES' RETIREMENT SYSTEM ACTUARIAL
VALUATION REPORT AND TRANSMITTAL LETTER TO THE GOVERNOR AND
LEGISLATURE**

Mr. Ron Seeling, Chief Actuary, presented June 30, 1998 Judges' Retirement System Actuarial Valuation Report. As of June 30, 1998, there was \$1.4 million in assets to cover liabilities of approximately \$2.3 billion assuming a 6 percent return continuing the present pay-as-you-go funding policy. Staff also ran the liabilities at a 7.5 percent return assuming the State were to commence pre-funding. Under this scenario, liabilities decreased to \$1.8 billion. The transmittal letter attempts to communicate to the Legislature and others there could actually be a substantial decrease in the overall eventual payments from the general fund, if the State pre-funded this plan. The Board is sponsoring legislation to produce that result.

On MOTION by Dr. William Crist, SECONDED by Mr. William B. Rosenberg and CARRIED, the Committee recommends that the Board approve the June 30, 1998 Judges' Retirement System Actuarial Valuation Report with instructions to file the Report with the Governor and Legislature, and request the Legislature and Governor to adopt an employer contribution schedule that properly funds the Judges' Retirement System.

**AGENDA ITEM 10 – JUNE 30, 1998 JUDGES' TIER II RETIREMENT SYSTEM
ACTUARIAL VALUATION REPORT**

Mr. Ron Seeling, Chief Actuary, presented the June 30, 1998 Judges' Tier II Retirement System Actuarial Report. Because investment returns have been better than anticipated and changes have been made to actuarial assumptions, the employer's contribution to Judges' Tier II is decreasing from 21.5% of pay in the current fiscal year to the recommended 18.567% of pay for the next fiscal year.

On MOTION by Dr. William Crist, SECONDED by Mr. Robert F. Carlson, and CARRIED, the Committee recommends the Board approve the June 30, 1998 Judges' Tier II Retirement System Actuarial Valuation Report with instructions to file the Report with the Governor and the Legislature, and adopt an employer contribution rate of 18.567% of pay for the period of July 1, 1999 through June 30, 2000.

AGENDA ITEM 11 – JUNE 30, 1998 LEGISLATORS' RETIREMENT SYSTEM ACTUARIAL VALUATION REPORT AND TRANSMITTAL LETTER TO THE GOVERNOR AND LEGISLATURE

Mr. Ron Seeling, Chief Actuary, stated as of June 30, 1998 the Legislators' Retirement System continues to be super-funded because of superior investment performance. The actual value of assets exceeds the present value of benefits by \$11 million. Staff asked that the Committee adopt an employer contribution rate of zero for the plan in light of the plan being super-funded.

On MOTION by Dr. William Crist, SECONDED by Mr. Robert F. Carlson and CARRIED, the Committee recommends the Board approve the June 30, 1998 Legislators' Retirement System Actuarial Valuation Report with instructions to file the Report with the Governor and the Legislature, and adopt an employer contribution rate of zero for the period of July 1, 1999 to June 30, 2000.

AGENDA ITEM 12- JUNE 30, 1998 VOLUNTEER FIREFIGHTERS' LENGTH OF SERVICE AWARD SYSTEM (VFLSAS) VALUATION AND CERTIFICATION

Mr. Ron Seeling, Chief Actuary, presented the June 30, 1998 Valuation for the Volunteer Firefighters' System. This report incorporates all changes as approved by the Board at their March meeting.

Staff is recommending an approach where employers in this System are billed \$149.47 per member per year of service earned.

ON MOTION by Dr. William Crist, SECONDED by Mr. Robert F. Carlson and CARRIED, the Committee recommends the Board approve the final 1998 Volunteer Firefighters' Length of Service Award System (VFLSAS) Actuarial Valuation Report with instructions to file the Report with the Governor and the Legislature.

**AGENDA ITEM 13 – STATE AND SCHOOLS EMPLOYER CONTRIBUTION RATES
FOR THE FISCAL YEAR JULY 1, 1999 THROUGH JUNE 30, 2000**

Mr. Ron Seeling, Chief Actuary, presented the State and Schools contribution rates for the Fiscal Year July 1, 1999 to June 30, 2000. There is a substantial reduction in the recommended employer contribution rate due to the superior investment performance. For the 1997-1998 Fiscal Year the State's contribution for State plans was approximately \$1.2 billion. The contribution for the current fiscal year is approximately \$766 million. Staff is recommending rates that will require an employer contribution of approximately \$463 million for the 1999-2000 Fiscal Year. The State's plans have moved to 114% funded as of June 30, 1998 using a 90% market value of assets. The School Plan has moved to 128.7% funded and their rate will continue to be zero.

On MOTION by Dr. William Crist, SECONDED by Mr. Fred Buenrostro and CARRIED, the Committee recommends the Board adopt the following employer contribution rates for the State for Fiscal Year July 1, 1999 through June 30, 2000:

State Miscellaneous Tier 1	5.026%
State Miscellaneous Tier 2	2.976%
State Industrial	0.026%
State Safety	9.513%
State Police Officers & Firefighters	4.575%
California Highway Patrol	13.345%
Schools	0.000%

AGENDA ITEM 14 – BENEFIT EQUITY

The following procedural motion was made:

On MOTION by Dr. William Crist, SECONDED by Mr. Fred Buenrostro, the Committee defer final action on all matters regarding the Benefit Equity recommendations contained in Agenda Item 14 until the Benefits and Program Administration Committee meeting scheduled for June 15, 1999, thereby allowing for further discussions on all aspects of the item today and during the period of May 18th through June 15th.

Dr. Crist said he was making this motion so that the Committee could allow the maximum time for discussion of the inequity proposals to ensure that in June the Committee may act on well thought out and unchallengeable proposals that will be most probably approved by the Legislature.

At this point the in the proceeding, Chairman Flaherman requested that anyone in the audience that wished to speak on the procedural motion to please come forward:

Several members of various organizations came forward to make public comment. Some of the organizations represented were: CSEA State, CSEA Retired, CDF Firefighters, CCPOA, CTA, City of Modesto, SMUD, CSU Retired, City of Long Beach, CA State Supervisors, Torrance Police Retirees, VFW, CA Association of Professional Scientists, SEIU, League of CA Cities, City of Livermore, ACSA and SCORE.

A request for a roll call vote was made:

Mr. Ronald L. Alvarado voted Yes,
Mr. Robert F. Carlson voted No,
Ms. Beth Renge, representing the State Controller's Office, voted Yes,
Dr. William Crist voted Yes,
Mr. Marty Morgenstern voted Yes,
Mr. William B. Rosenberg voted No.

The result of the roll call vote was four Yes votes and two No votes. The MOTION CARRIED.

There was a 90-minute discussion on the substance of this agenda item.

A number of items were identified for staff to report back at the June Committee meeting with further information including:

1. Further information of the impact of the 6% interest rate charged to Tier II members and request for case examples on how that could interact with other buy backs that are going on simultaneously.
2. Information that would allow the Committee to consider partial buy-backs of Tier I service.
3. Information on how CalPERS might structure longer buy-back amortization periods, possibly as long as the expected lifetime of the member.
4. Additional information on other benefits that could be included in legislation that would pertain to local agencies in terms of a base package that all local agencies have to offer their employees.
5. An example showing the impact on rates under various interest return scenarios to include the assumption of the benefit equity package and to include the economic cost.
6. Research and information on modifying the proposed 2.7% @ 55 formula factors between ages 55 and 62.

AGENDA ITEM 15 – DEFERRED RETIREMENT OPTION PLANS (DROP) (SECOND READING)

Mr. Ron Seeling, Chief Actuary, presented the second reading of the Deferred Retirement Option Plans (DROP) proposal. Staff is requesting at this time a “Back” DROP. Staff is preparing to proceed with two separate legislative proposals: one for State and Schools and the other one for Public Agencies.

On MOTION by Mr. William B. Rosenberg, and SECONDED by Mr. Ronald L. Alvarado and CARRIED, the Committee recommends the Board:

1. accept the report submitted by the DROP Task Force;
2. pursue two separate legislative provisions, one for Public Agencies and one for State/Schools; and
3. seek a delayed implementation date of no earlier than July 1, 2000, but preferably January 1, 2001, for “Back” DROP only at this time.
4. Defer the decision as to whether to seek legislative approval for a “Forward” DROP until after the completion of Phase IV Project II of COMET and after a full impact analysis can be done by all branches of CalPERS regarding implementation of a “Forward” DROP.

Ms. Beth Renge, representing the State Controller’s Office, and Mr. Fred Buenrostro, representing the Department of Personnel Administration, Abstained.

AGENDA ITEM 16 – POLICIES ON SUPER-FUNDED PUBLIC AGENCIES (IMPLEMENTATION OF ASSEMBLY BILL 2099) (SECOND READING)

Mr. Ron Seeling, Chief Actuary, stated AB 2099 provides that effective January 1, 1999 super-funded agencies can pay member contributions out of their surplus assets. Mr. Seeling is requesting delegation to the Chief Actuary the authority to determine all policies necessary to implement the provisions of Assembly Bill 2099, and also to have the record show that it is CalPERS intent to implement the provisions on a fiscal year rather than a calendar year basis.

On MOTION by Mr. Ronald L. Alvarado, SECONDED by Mr. Robert F. Carlson and CARRIED, the Committee recommends the Board delegate to the Chief Actuary the authority to determine all policies necessary to implement the provisions of Assembly Bill 2099 subject to the following guideline:

- the 12-month period during which the super-funded public agency has the right to transfer employer assets to satisfy all member contributions be the 12-month rate payment period aligned with the actuarial valuation which determined that the plan was superfunded.

Committee Chair Michael Flaherman requested that staff in the future bring before this Committee a set of policies on super-funded agencies:

- to commission a forward looking study from our actuarial consultant pool on super-funded agencies that wish to pay employees contributions out of employer assets and what that would do to their super-funded status;
- what would happen if they fall out of super-funded status; and
- what kind of notice would be sent to the employees about this type of action.

AGENDA ITEM 17 – CHIEF ACTUARY REPORT

Mr. Ron Seeling, Chief Actuary, presented the Actuarial Assignment Matrix.
Mr. Seeling also reported on:

- EFI certification of the Judges' Retirement System Tier I has been received but too late to put on this agenda; and
- staff is planning a workshop in September on "Usage of Excess Assets".

AGENDA ITEM 3 – BOARD MEMBER REQUEST FOR CONTINUED REIMBURSEMENT TO PUBLIC AGENCY EMPLOYER

At this point in the proceeding, Committee Chair Michael Flaherman passed the gavel to Vice Chair Ronald L. Alvarado.

Board Member Michael Flaherman is renewing his request for additional reimbursement. He is requesting the Board continue to authorize an additional 25 percent reimbursement (for a total of 50 percent) of his total annual compensation to his employer, Bay Area Rapid Transit (BART), to be effective June 1, 1999. The agenda item contains a letter requesting reimbursement and a detailed record of time spent on CalPERS business.

On MOTION by Dr. William Crist, SECONDED by Mr. William B. Rosenberg and CARRIED, the Committee recommends that the Board approve an additional 25 percent reimbursement to the Bay Area Rapid Transit (BART) (for a total of 50 percent) for Board Member Michael Flaherman, effective June 1, 1999, the exact amount to be determined upon presentation of BART records.

Ms. Beth Renge, representing the State Controller's Office, voted No.

At this point in the proceeding, Vice Chair Ronald L. Alvarado returned the gavel to Chair Michael Flaherman.

AGENDA ITEM 4 – BOARD COMPENSATION POLICY (FIRST READING)

Mr. James Burton, Chief Executive Officer, presented this item as a first reading. This item discusses the results of the independent study done by SCA Consulting last year. A few additional facts were added:

- data for the past 2 ½ years shows the noticed days that the Board is required to be in session amounts to 24 percent of a work year; and
- information was obtained concerning compensation that is paid to directors of public corporations.

This item contains a draft policy and staff is looking for direction from the Committee on how to proceed.

On MOTION by Dr. William Crist, SECONDED by Mr. Ronald L. Alvarado the Committee recommends the Board approve the draft Board Compensation Policy as a first reading and direct staff to incorporate changes when this item is brought back for a second reading.

A request for roll call vote was made:

Mr. Ronald L. Alvarado voted Yes,
Mr. Robert F. Carlson voted Yes,
Ms. Julie Bornstein, representing the State Controller's Office, voted No,
Dr. William Crist voted Yes,
Mr. Fred Buenrostro, representing the Department of Personnel
Administration, voted No,
Mr. William B. Rosenberg Abstained.

The results of the roll call vote was three Yes votes, two No votes, and one Abstention.
The MOTION CARRIED.

AGENDA ITEM 5 –CANDIDATE STATEMENT REGULATION UPDATE

Mr. Mike Koester, CalPERS staff, presented the possible revisions to the regulations governing CalPERS' elections in regards to the candidate statements. At the February 1999 BPAC meeting, staff was directed to review possible amendments to regulations governing candidate statements. Section 554.4 of CalPERS' regulations currently permits candidate statements to contain a statement of the candidate's opinions or views. The specific issue of interest to this Committee was whether the content of candidate statement may be limited to short, biographical statements. The current regulations were in Option A of the agenda item. CalPERS' Legal Office has found no cases directly related to candidate statements in elections similar to CalPERS but has found that the State Supreme Court has upheld statutory provisions, which limit the content of candidate statement in judicial elections.

On MOTION by Mr. William B. Rosenberg, SECONDED by Mr. Robert F. Carlson, the Committee recommends the Board direct staff to propose and secure adoption of a regulation to prohibit references to opposing candidates in candidate statements and also to prohibit statements of candidate opinions or views as outlined in Option C submitted by staff.

A substitute motion was made.

On MOTION by Dr. William Crist, SECONDED by Mr. Ronald L. Alvarado, the Committee recommends the Board direct staff to propose and secure adoption of a regulation to prohibit references to opposing candidates in candidate statements as outlined in Option B submitted by staff.

The MOTION FAILED.

Ms. Beth Renge, representing the State Controller's Office, and Dr. William Crist, Abstained.

The Committee took up the original motion.

The MOTION CARRIED.

Ms. Beth Renge, representing the State Controller's Office, Abstained.

Mr. Fred Buenrostro, representing the Department of Personnel Administration, voted No.

Mr. James McRitchie, CalPERS' member and Mr. Charlie Oates, Torrance Police Retiree Officers Association, spoke on this item urging the Committee not to recommend changes to the election regulations.

AGENDA ITEM 6 – TRANSFERRING CALPERS ELECTION ADMINISTRATION TO SACRAMENTO COUNTY REGISTRAR OF VOTERS

Mr. Mike Koester, CalPERS staff, stated that after lengthy discussions with the Sacramento County Registrar of Voters it was concluded that the Registrar is not able to conduct the whole of CalPERS' current year election. The difficulty for them is that their current election schedule is already quite full, including some statutorily authorized special elections that were just announced within the last few weeks. The Registrar has indicated that they do have capacity to administer the ballot designation and candidate statements for the current election. If CalPERS were to contract with the Registrar's office for this service, the cost would be nominal.

To perform these services for CalPERS, the Registrar must obtain approval of the County Board of Supervisors. The Registrar is prepared to recommend to the County Board that they administer the ballot designation and candidate statement review portion of CalPERS' current election. Once approval is obtained, staff would work with the Registrar to provide guidance and policy direction on the activities their office is to perform.

On MOTION by Mr. Robert F. Carlson, SECONDED by Mr. William B. Rosenberg the Committee recommends the Board:

1. not delegate the ballot designation and candidate statement review function to the Sacramento County Registrar of Voters for the current election; but instead,
2. direct staff to continue to pursue discussions with the Sacramento County Registrar of Voters on delegating all elections functions for future elections.

The motion was withdrawn and new motion made.

On MOTION by Dr. William Crist, SECONDED by Mr. Ronald L. Alvarado and CARRIED, the Committee recommends the Board:

1. direct staff to delegate of the ballot designation and candidate statement review functions to the Sacramento County Registrar of Voters for the current election; and
2. direct staff to pursue discussions with the Sacramento County Registrar of Voters on delegating all election functions for future elections.

AGENDA ITEM 7 – PROPOSED IMPROVEMENTS TO MEMBER NEWSLETTER

Ms. Patricia Macht, Chief, Office of Public Affairs, presented a proposal to improve the member newsletter known as PERSpective. Currently CalPERS mails the publication in bulk to employers who distribute it to members through interoffice mail. The newsletter is mailed directly to retirees' homes. PERSpective is one of three ongoing

member communication vehicles. The other two are the Annual Member Statement and the CalPERS Health Open Enrollment Kit.

In January, the Office of Public Affairs conducted a readership survey of PERSpective to determine the frequency with which members receive this publication, whether the content was meeting their needs, and how CalPERS might improve upon this publication in the future. It was recommended that we change the mailing to members' homes and customized content as appropriate to audience types.

Today through the present distribution, CalPERS is spending 48 cents per member and under the staff's recommendation this amount would rise to 1 dollar per member. These improvements will respond to members' desires and employers will also appreciate a change of this nature because of the extra workload distribution has created.

On MOTION by Mr. Ronald L. Alvarado, SECONDED by Mr. Robert F. Carlson and CARRIED, the Committee recommends the Board approve home delivery, four times a year, of the PERSpective newsletter and direct staff to create customized editions by audience type where appropriate to improve readership.

Ms. Beth Renge, representing the State Controller's Office, voted No.

AGENDA ITEM 8 – LEGISLATION

Mr. Casey Young, Chief, Office of Governmental Affairs, presented five legislative items for approval by the Committee:

AGENDA ITEM 8A – AB 738 (DAVIS), PRE-RETIREMENT DEATH BENEFIT FOR STATE AND LOCAL MEMBERS

This bill corrects a structural deficiency in the program design by providing a monthly allowance to eligible survivors based upon the length of service, regardless of the member's age at the time of death.

On MOTION by Mr. William B. Rosenberg, SECONDED by Mr. Robert F. Carlson and CARRIED, the Committee recommends the Board adopt a Support if Amended position.

Mr. Fred Buenrostro, representing the Department of Personnel Administration, Abstained.

AGENDA ITEM 8B – AB 799 (KEELEY) – PERMITS DIFFERENT RETIREMENT FORMULAS FOR MONTEREY COUNTY EMPLOYEES IN THE "PEACE OFFICER" CLASSIFICATION, BY CONTRACT AMENDMENT

This bill would permit Monterey County to contract for a different formula for their “sworn personnel” only.

On MOTION by Dr. William Crist, SECONDED by Mr. Robert F. Carlson and CARRIED, the Committee recommends the Board adopt an Oppose position.

Staff was directed to bring back additional information to the Board meeting on Wednesday, May 19th on the issue presented in this bill.

AGENDA ITEM 8C – SB 976 (PERATA)

This bill would make a series of technical corrections to JRS II, and create a new pre-retirement death benefit in JRS and JRS II.

On MOTION by Dr. William Crist, SECONDED by Mr. Ronald L. Alvarado and CARRIED, the Committee recommends the Board adopt a Support position.

AGENDA ITEM 8D – ACA 12 (PAPAN & GRANLUND)

This constitutional amendment would eliminate a disincentive to service in elected office. It would enable lawmakers to participate in a retirement plan during their years of service with the State and ensure benefits for family members in the event of death during their terms in office.

The suggested amendments would delete unnecessary and confusing language relating to crediting of previous service.

On MOTION by Dr. William Crist, SECONDED by Mr. Robert F. Carlson and CARRIED, the Committee recommends the Board adopt a Support if amended position.

AGENDA ITEM 8E – AB 1323 (FLOYD)

The benefits all state employees, who retired prior to July 1, 1991, were calculated using a 36-month period to determine their final compensation. This bill will change the basis for calculations of final compensation for legislative employees who retired between January 1, and March 31, 1991.

On MOTION by Dr. William Crist, SECONDED by Mr. William B. Rosenberg and CARRIED, the Committee recommends the Board adopt a Neutral position.

AGENDA ITEM 18 – ASSISTANT EXECUTIVE OFFICER REPORT

Ms. Barbara Hegdal, Assistant Executive Officer, Member and Benefit Services presented the Benefits and Program Administration Assignment Matrix. Ms. Hegdal also stated that CalPERS Effectiveness Measures for the Third Quarter of Fiscal Year 1998/99 were included in this item.

AGENDA ITEM 19 – INFORMATION ITEMS

Agenda Item 19 A – First Quarter Report on CalPERS 457 Deferred Compensation Program

Agenda Item 19B – Simplified Benefit Option Factors

Agenda Item 19C – Draft Agenda for the June 15, 1999 Benefits and Program Administration Committee meeting.

The following item was added:

➤ Benefit Equity Report

There being no further business, the Benefits and Program Administration Committee was adjourned at 7:45 p.m.

The next meeting of the Benefits and Program Administration Committee is scheduled for June 15, 1999, at 1:30 p.m. in Sacramento. (Subsequently the meeting has been changed to 9:00 a.m.)

JAMES E. BURTON
Chief Executive Officer